

RIAI Contracts Training Course



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What Will Be Covered?

- Overview of the RIAI Contracts
- New 2025 version of contract November
- Revised format of contract – agreement , particulars, conditions , schedules Notices, Communications
- Definitions cl 1
- Scope, Role Responsibilities Architect/ Contractor/Employer cl 2
- With Quantities cl2
- Subcontracts cl3
- Time/ delays programme Date for Possession Date for Completion
- Liquidated damages/ Claims cl4 /

What Will Be Covered?

- Retention period, defects, partial possession/completion
- Liabilities /Indemnities
- Contract Sum / Contractor's claims
- variations / valuing variations
- Payments and final payments
- Determination
- Disputes

Private standard building contracts

- RIAI – with quantities (yellow) – 2025 first edition
October first print
- RIAI without quantities (blue) – 2025 first edition
October first print
- Above are Liaison Committee Agreed Contract published by RIAI but approved by CIF, SCSl – also ACEI and EI as members of Liaison
- SF 88 2017 Edition – small value works
- Plain English contract –white form – not industry agreed
- VAT inclusive contract sum

IMPLIED TERMS

- Employer will give possession of the site
- Employer will provide necessary plans and other details within a reasonable time
- Employer will not obstruct the contractor in the performance of the work
- Employer will pay a reasonable price for work done
- Contractor will do work in a workmanlike manner
- Contractor will proceed with reasonable diligence and complete within a reasonable time

IMPLIED TERMS

- Materials supplied are reasonably fit for the purpose for which they are used and are of good merchantable quality
- Somerset 13 tiles apparently perfect on delivery –weathering defects developed after time –required replacement – if tiles as selected by Architect had not been suitable for their purpose contractor would not be liable – Contractor held liable as tiles failed owing to defect in quality
– **Young & Martin v McManus Childs Ltd 1968**

RIAI FORMAT

- Agreement – the essentials – parties, recitals, articles, attestations, subject matter and consideration
- Contract Particulars
- Conditions - the terms
- Schedules:
 1. Contract drawings/specifications
 2. Bill of Quantities / Schedule of Rates
 3. Subcontract collateral agreements,
 4. Performance bonds
 5. Indemnities and insurance
 6. Form of retention guarantee bond
 7. Advance payment conditional guarantee bond

A : THE AGREEMENT -RIAI

- **Parties:** Identify the parties – Contractor/Employer – names – registered addresses
- **Recital:** Description of the Works and location of the works –and the reference to date of the tender offer
- Reference to contract documents drawings/specifications – in schedule 1
- Bill of Quantities – Yellow- Schedule of rates – Blue form - in schedule 2

A : THE AGREEMENT - RIAI

- **Articles:** the contract is
 - A. The Agreement
 - B. The Contract Particulars (formerly the Appendices)
 - C. The Conditions of Contract
 - D. The Schedules
- Article A 4 -The Term architect shall mean Architect named in Contract Particulars / Article A 5 optional the Quantity Surveyor named in the Contract Particulars (mandatory Yellow Form)
- A 8 Interpretations re Construction Contracts Act 2013

RIAI - AGREEMENT

- A 3 2. ...For the consideration stated in Article 3 the Contractor will upon and subject to Part C (the conditions of contract) execute and complete the Works shown upon the contract Drawings and Specifications.
- A 3.3. The Employer will pay the sum stated on line F €..... hereinafter referred to as “the Contract sum”, or such other sum, as shall become payable by virtue of the said Conditions of Contract at the time and in the manner specified in the said Conditions of Contract.
- A 3.7 notices for determination cl 11.1 and 11.2 and referral to dispute process 12.1 to 12 .4 inclusive by registered post to address of relevant party set out in Contract Particulars.

RIAI - AGREEMENT

- A3.9 order of precedence of documents
 - A. Agreement other than recitals
 - B. Contract Particulars
 - C. Conditions of contract
 - D. Schedules
 - E. Recitals

RIAI - AGREEMENT

- A4 Attestation
- Employer signature / witnessed – if under seal – person authorised to authenticate
- Contractor signature / witnessed – if under seal – person authorised to authenticate

THE AGREEMENT

- Signature of parties – individual, partnerships, joint venture and companies – seal
- Witnessed for proof purposes
- If the parties assign their seal – the contract is “under seal” – and therefore binding for 12 years after completion – otherwise 6 years – ACT

THE AGREEMENT

- Formal contract signed some time after commencement of work-terms apply retrospectively
- **Trollope & Colls Ltd and Holland and Hannen and Cubbitts Ltd v Atomic Power Construction Ltd 1962**
- Substantial changes before formal contract entered into – letter of intent on basis of formal terms - sought payment on quantum meruit rather than basis of original tender adjusted for variations. Held parties all along contemplated entering contract which would govern work done before as well as after agreement.

THE AGREEMENT

- **Standard conditions –normally written words are more likely to represent intentions of parties over the printed words**
- **Contract 300 house. Bill of Quantities provided for completion in stages-appendix for one date for completion – term**
“nothing contained in the contract bills shall override, modify or affect in any way whatsoever the application or interpretation of that which is contained in these conditions” –
Held – liquidated damage could not be deducted until expiry of period in appendix
- **M J Gleeson Contractors Ltd v London Borough of Hillingdon 1970**

The Contract Particulars: RIAI

- Architect Art 4
- QS Art.5
- Art. 7 Parties address for notices
- Art. 8 Email address for payment claim notice
- 1.1. Site address
- 1.1 Designated date
- 1.5 Sections name/description – date for completion – lad rate
- 2.1.1.c Schedule of contractor design – yes or no
- 2.2 Method of measure
- 4.2 Date for possession
- 4.2 DATE FOR COMPLETION
- 4.2 Phased possession
- 4.3 Liquidated damages
- 4.5.3 Retention period

The Contract Particulars: RIAI

- 5.2.1/5.2.2. or 10.6 Insurances minimum sums
- 5.3.1, 5.4.1, 10.7, 5.5.2, 5.8, 5.10 Various insurance issues
- 6.2.1 Payment claim intervals etc
- 6.3 Retention
- 6.12.1 d Period of final measurement
- 7.1.1, 7.1.2 Subcontract collateral agreement
- 7.2 Performance bond
- 9.4 List of key contractor personnel
- 12.3 Arbitration
- 10 Optional clauses

TERMS AND CONDITIONS-RIAI

1. DEFINITIONS

TERMS AND CONDITIONS-RIAI

Definitions

- **Contractor design** - design which the contractor is (i) required to carry out, (ii) required to procure the carrying out , or (iii) responsible for, in each case as set out or identified in the Contract Documents and/or, where selected in the Contract Particulars, in a schedule in the Contract Documents.
- **Unforeseeable** – a condition, circumstance or occurrence that an experienced contractor tendering for the Works could not have reasonably foreseen on the Designated Date, having inspect the Site and its surroundings and having satisfied itself as to all matters concerning the Site, including its form and nature and geotechnical, hydrological and climatic conditions.

TERMS AND CONDITIONS-RIAI

Definitions

- **Practical completion -**

- The Work or the Works comprised in a Section, as the case may be, have been carried out to such a stage that they can be taken over and used by the Employer for their intended purpose.
- Any items of work or supply them outstanding or any defects then patent are of a trivial nature only and are such that completion or rectification does not interfere with or interrupt use of the Works.
- The Contractor has provided all collateral agreements required under and in accordance with scl 7, 1.
- The Contractor has given the Employer the documents that the Contract requires to be provided before Practical Completion.
- All tests that are required by the Contract to be passed before Practical Completion have been passed.
- Where statutory certification under the Building Control Regulations applies to the Works, or the Works comprising a Section, the Certificate of Compliance on Completion in respect of the Works or that Section has been included in the Register.

TERMS AND CONDITIONS-RIAI

Definitions

- **Building Control Regulations 1997 to 2025**
- **Designated Date** - in Contract Particulars - For Selected or Nominated Subcontracts/Suppliers 10 working days prior to receipt of relevant tenders
- **Force Majeure** - exceptional event /circumstance beyond a party's control, not in existence nor could be reasonably provided against prior to entering contract, neither could reasonably have avoided or overcome, and not substantially attributable to the other party – e.g. war, revolution, flood, hurricanes or similar storms, or other actions of the elements. Acts of God or the Public Enemy, restrictions or restraints by Governments Authorities whether state or local, whether civil or military, acts of civil or military authorities.
- **Working Day** - day other than Saturday/Sunday/Good Friday or any public holiday (as per Organization of Working Time Act 1997)

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- **1.2 Holidays, Registered Employment Agreements**
- **1.3 The Contract Sum** – in the event of changes to VAT rate applicable for whatever reason, such rates shall be applied to the Contract Sum less VAT and price of performance bond if applicable - Contract Sum adjusted accordingly.
- **1.4 Notices** – if the last of those days is not a working day, the notice shall be taken to have been validly delivered if delivered on the next working day.
- **1.5 Works** – includes a reference to a Section.
- **1.6 Legislation** – reference includes amendments / replacements.
- **1.7 Gender Neutral Terms**
- **1.8 Clause references, headings and optional clauses**
- **1.9 Interpretation** “including”, “in part”, “such as” not to be read as exhaustive or to limit, but may extend, the generality of the provisions to whatever they relate.

TERMS AND CONDITIONS-RIAI

2. Scope of Contract

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Scope of Contract 2.1.1

Contractor shall:

- a) carry out and complete the Works in accordance with the Contract documents and with the directions and to the reasonable satisfaction of the Architect, who may in the Architect's **absolute** discretion and from time to time issue further drawings, details and/or written or oral instructions hereinafter referred to as “Architects’ instructions” in regard to:

Note word highlighted omitted from 2025 wording

TERMS AND CONDITIONS-RIAI

Scope of Contract 2.1.1

- i. The modification of the design, quality, or quantity of the Works or the addition, omission or substituting of any work, hereafter referred to as “Variations”.
- ii. Any discrepancy in or between Contract Documents
- iii. The removal from site of any materials or goods brought thereon by the Contractor...
- iv. The opening up for inspection... cl 2.6
- v. The removal and/or re-execution of any Works... not in accordance with the Contract Documents
- vi. Postponement of any works to be executed under the provisions of the Contract...
- vii. Dismissal from the Works of any person employed thereon...
- viii. The amending and making good of any defects cl.4.5
- ix. Any other matter pertaining to the proper execution of the Contract

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Scope of Contract 2.1.1

- b) Comply with and ensure that any subcontractors and the Contractor's employees and agents comply with all Applicable Law.
- c) Carry out and complete the Contractor's Design exercising the reasonable skill and care and diligence equivalent to that which a contractor or, where relevant, a sub-contractor, having the specific qualifications and experience required to provide such design for the specified works would be expected to exercise.

The Contract shall forthwith comply with and duly execute any work comprised in an Architect's instruction.

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- 2.1.2 – If compliance with an Architect's instruction will involve a Variation, such variation shall be dealt with under sub cl 6.4 ... value added to or subtracted from Contract Sum as case may be.
- 2.1.3 – If compliance with an Architect's instruction , which does not give rise to a variation, will involve the Contractor in loss or expense beyond that provided for in or reasonably contemplated by this Contract, the Contractor shall give notice of this to the Architect and the Architect's dissent, therefrom is not communicated by the Architect in writing in a further 5 working days, then, unless such instruction was issued by reason of some breach of this Contract by the Contractor – *The Architect shall ascertain the amount of such loss and expense and be added to the Contract Sum.*

TERMS AND CONDITIONS-RIAI

- 2.1.4 – If 5 working days after receiving notice to comply with an Architect's instruction the Contractor has not complied, the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to the Architect's instruction, and all costs incurred by the Employer in connection therewith shall be recoverable from the Contractor.
- 2.1.5 – deals with fossils, antiquities, monuments etc found... not to be disturbed, take necessary steps to preserve and promptly upon discovery notify the Architect. Unless by operation of applicable law it is deemed otherwise, these items become the property of the Employer.

RIAI CONDITIONS YELLOW FORM – WITH QUANTITIES

- 2.2.1 a)
- The Contract Sum shall be deemed to provide for the quality and quantity of work set out in the descriptions and quantities in the Bill of Quantities
- The Bill of Quantities unless otherwise expressly stated shall be deemed to have been prepared in accordance with the Method of Measurement of Building Works stated in the Contract Particulars but

RIAI CONDITIONS YELLOW FORM – WITH QUANTITIES

- 2.2.1. a) cont.
-but save as aforesaid nothing contained in the said Bill shall override, modify or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions.
- 2.2.1 b) No error in description or quantity in the Bill of Quantities nor any omissions of items therefrom shall vitiate this Contract but such error or omission shall be rectified and the rectification treated as a Variation under Clause 6.4 hereof.
- 2.2.1 c) any claimed re-measurement – if in the opinion of the Architect – is in whole or in part unnecessary – fees for same shall be at the Contractor's expense – this excludes variations

Keating on construction contracts

8th ed. 4-027

- A With Quantities contract is not a measure and value contract ... *all variations to be ... added to, or deducted from the lump sum,*” it was held that the final account must be taken by adjusting the lump sum for variations, and not by remeasuring the works as carried out and applying the bill rates to the quantities so found.
– ***London Steam Stone Sawmills Co v Lorden (1900) H.B.C. (4th Ed) Vol 2 p310 DC***

The Scope - RIAI

- 2.2.2. /2.2.3 as old 3 b documents to be provide – now digital – only one copy – Architect entitled to make copy of bill of quantities – no reference to price BQ but assumed it is? Contractor's rights are same as before.

The Contractor Responsibilities - RIAI

- 2.3.1 Contractor to provide everything necessary for the proper execution of the Works according to the true intent and meaning of the Contract Documents taken together, whether such intent and meaning may or may not be particularly shown or described provided, they are reasonably to be inferred therefrom. If the Contractor shall find any discrepancy in the Contract Documents, the Contractor shall immediately and in writing refer it to the Architect who shall decide the course of action: stated dimensions to be followed in preference to scaled dimensions.

The Contractor Responsibilities - RIAI

- **Set out the works** cl 2.4.1
- **Cl 2.5. Materials and workmanship** to be of respective kinds described in the Contract Documents – vouchers and verification documents to prove compliance...
- Arrange for tests the Architect may require in writing cl 2.5.1
- Open for inspection work covered up at the request of the Architect cl 2.6
- Keep upon the works at all times a competent site manager cl 2.7
- Give access to the Architect or persons nominated by him and also Employer and persons nominated by him cl 2.8
- Clerk of works cl 2.9 specifically stated cannot instruct

TERMS AND CONDITIONS-RIAI

3. Subcontracts

Selected sub contract RIAI

- **CI 3.1.1** Where the Contract Documents provide that part of the Works are to be carried out by an entity which is named as a Selected Subcontractor. The Contractor shall engage the Selected Subcontractor on the basis
 - A. of terms upon which the tender for the Selected Subcontractor is based
 - or
 - B. Such other form of subcontract as may be required by the Contractor and to which the Architect has no reasonable objection
- **CI 3.1.2** Upon termination the Contractor shall replace and none shall be engaged against whom the Architect shall make reasonable objection – prior to engagement the Contractor shall notify the Architect of the proposed replacement and provide such information as the Architect may reasonably require
- **CI 3.1.3** Employer is in no way liable to / for a Selected Sub-Contractor

Nominated Sub contract RIAI

- Nominated sub contract cl 3.2 – entity to be nominated by the Architect – will be a Nominated Subcontractor and shall be engaged by the Contractor
- 3.2.2 a) No Nominated Subcontractor shall be engaged upon or in connection with the Works whom the Contractor shall make objection for reasons considered sufficient by the Architect ... whom shall not enter a subcontract which shall indemnify the Contractor against the same liabilities in respect of the sub-contract, as those for which the Contractor is liable to indemnify the Employer under the Contract.

Nominated Sub contract RIAI

- 3.2.2.b) Sums directed by Architect to be paid to Nominated Sub contractor for executing, designing, and/ or supplying and fixing parts of the Works, shall be paid by Contractor within 5 working days of receipt of payment of the Architect's certificate for the value of such works less only retention the Contractor is entitled to deduct
- 3.2.2 c) Before any interim cert is issued -Contractor if requested must provide reasonable proof that all nominated accounts included previously have been duly discharged . In default the Employer may pay such accounts upon an Architect's cert and deduct the amount so paid from any sums due to the Contractor

Nominated Sub contract RIAI

Nominated sub contract cl 3.2 –

- 3.2.2. d) Final payment may be secured to Nominated Subcontractor in advance of final certification if Nominated sub satisfactorily indemnifies the Contractor against any latent defects.
- 3.2.2 e) Nothing in conditions (other than collateral warranties) shall render Employer liable to any Nominated Subcontractor.
- *Note words highlighted omitted from 2025 version*

Nominated Sub contract RIAI

Nominated sub contract cl 3.2.2 –

- In the event of determination of Nominated Subcontractor employment in accordance with the terms of their subcontract, then another entity shall be nominated by the Architect and engaged by the Contractor – and unless the Contractor shown to be in default Contractor shall not be liable for any increase cost of the subcontract work that may arise by reason of the necessity to have the subcontract so completed.
 - Employer entitled to reasonable time to re-nominate – Contractor at risk of that time and cost – But there is a duty to re-nominate and any unreasonable delay gives an entitlement to costs and an extension of time
- ***North West Metropolitan Regional Hospital Board v T A Bickerton & Sons Ltd 1970 1 All ER 1039 and Percy Bilton Ltd v Greater London Council 1982 20 BLR 1***

Nominated Sub contract RIAI

- **Implied terms – Nominated in time to incorporate work into programme and they will be willing to enter into a sub-contract consistent with the terms of the main contract**
- *Leslie v Metropolitan Asylums District Managers CA 1901 1 LGR 862*
- ***A later date for completion than the Main Contractor's notified date for completion is grounds for objection***
 - *Percy Bilton Ltd v Greater London Council CA 1981 17BLR 9*

Nominated Subcontracts

- *Design responsibilities specifically excluded from Main Contractor's responsibility*
- **Contractor not liable for defects in prime cost work which arise before completion where original nominee determined**
- *Fairclough Building Ltd v Rhuddlan Borough Council CA 1985 3 Con Lr 38*

Nominated Subcontracts

- *Retention*
- *Employer holds in trust for nominated subcontract-in event of main contractor's insolvency – subcontractor may receive in full retention owed*
- *Re Arthur Sanders Ltd (Chan div) 1981 17BLR 125*
- *Maintained against right of liquidator under Company Law =takes company's property subject to the liabilities which affected it*
- *Glow Heating Ltd v Eastern Health Board, Rooney and Building and Engineering Ltd (in liquidation) High Cr 1988 6 ILT 237*

Employer / Sub-contractor Relationship

- No legal relationship – no “privity of contract”
- Process of nomination – Architect/Employer presumed to negotiate on behalf of the main contractor for the purpose of the subcontractor entering a contract with the main contractor
- Means these parties may exercise rights/remedies
 1. In Tort
 2. Name Borrowing provisions
 3. Direct warranty or collateral agreement between Employer and Sub-contractor

MAIN CONTRACTORS / SPECIALISTS

- **Employer's Direct Contractors/Supplier**

RIAI clause 3.5

- **3.5.1** Contractor shall allow reasonable access for Employer's independent contractors, tradesmen, artists or other to carry out works or services not forming part of the contract. They must submit programme and method statement to both Architect and Contractor and subject to approval of both (approval shall not unreasonably be withheld).
- **3.5.2** Employer to indemnify the Main contractor against all claims arising out of such employment.
- **3.5.3** Main Contractor shall facilitate access at own expense and be entitled to payment for any attendance or use of plant provided.
- **3.5.4** Right to remove same where in the reasonable opinion of the Contractor such person create risk to safety/health or welfare.

TERMS AND CONDITIONS-RIAI

4. Time for completion

TERMS AND CONDITIONS-RIAI

TIME FOR COMPLETION, BUILDING CONTROL REGULATIONS AND PRACTICAL COMPLETION

- Programme new cl.4.1.1. Prior to date for possession Contractor shall provide the Architect with the Programme that sets out the critical path with a detailed logic sequence, duration and order of procedure in which the Contractor proposes to carry out the Works in accordance with the Contract. Not a contract document.
- 4.1.2 provide on a monthly basis current programme showing past, present and projected progress of the Works.

TERMS AND CONDITIONS-RIAI

TIME FOR COMPLETION, BUILDING CONTROL REGULATIONS AND PRACTICAL COMPLETION

- 4.1.3
 - a) Contractor asserts not possible to achieve PC by Date for Completion or'
 - b) Architect considers at anytime the progress of the works does not conform with the current programme shall notify the Contractor
- Contractor shall provide revised programme in compliance with 4.1.1 – re
 - a) by earliest date or b) demonstrate ability to achieve PC by date for completion.
- The Contractor shall supplement its resources as necessary to meet and comply with the requirements of such revised Programme.

Dates – Contract Period

- RIAI old cl28 date of possession – stated in Contract Particulars
- **4.2.1** Possession of the Site or Phases Possession, as the case may be, shall be given to the Contractor on or before the Date for Possession or Dates for Possession. The Contractor shall thereupon begin the Works, regularly proceed with and complete the Works, except such painting, papering or other decorative work as the Architect may instruct the Contractor to delay, on or before the Date for Completion stated in the Contract Particulars subject nevertheless to the provisions for extension of time hereinafter contained.
- If the Date for Possession or Dates for Phased Possession are deferred by the Employer, then the Contractor shall be entitled to receive from the Employer compensation for any loss incurred due to dislocation of the Contractor's organisation and any such loss from this cause shall be ascertained and certified by the Architect.
- Old Cl 28 says *“any **time** lost shall be ascertained and certified by the Architect”*

4.3

Damages for non-completion

- RIAI old cl29 a LADs
- **4.3.1** If the Contractor fails to Practically Complete the Works by the Date for Completion stated in the Contract Particulars or within any extended time under sub-clause 4.4 and the Architect certifies in writing , on simultaneous notice to the Employer and the Contractor, that in the Architect's opinion the Works ought reasonably so to have completed, then:
 - a) the Contractor shall pay or allow to the Employer the sum stated and at the rate stated in the Contract Particulars as Liquidated and Ascertained Damages for the period during which the said Works shall so remain or have remained complete;
and
 - b) the Employer may deduct such damages from any money due or to become due to the Contractor under the Contract.

4.3

Damages for non-completion

- RIAI old cl29 b Employer's breach – now 4.3.2.
- If any act or default of the Employer delays progress of the Works, then the Contractor shall within five working days of the act or default give notice to the Architect to this effect and, subject to Clause 6.11 any time lost from this cause shall, subject to the provisions of sub cl 4.4.3, be ascertained and certified by the Architect and the Employer shall pay or allow to the Contractor such damages as the Contractor shall have incurred by the delay.
- As a condition precedent to the Contractor's entitlement to claim damages under this sub-clause 4.3, the Contractor shall fully comply with the requirements of sub-clause 6.11 and in the event the Contractor does not comply with Sub-clause 6.11 1 to 6.11.4, Sub clause 6.11.5 shall apply.
- **Potential Issue – role for Architect in ascertaining damages not stated – is it implied by reference to the notice clause 6.11? – See also 2.1.3 and 4.2.1 specifically refer to the Architect's role to ascertain and certify the loss.**
- **Elliott & Co v Minister of Education 1986 WJSC SC 542 Supreme Crt. Decided cl 29b – Architect's cert not conclusive Finlay CJ**

EXTENSION OF TIME

- **CI 4.4.1.** If in the opinion of the Architect the Works be delayed ... (by named delay events)

Then in all such cases the Architect shall, as soon as it is practicable for the Architect to do so, make a fair and reasonable extension of time for completion of the Works.

- **4.4.2** Architect may have regard to any negligence, omission, breach or default of the Contractor which caused or contributed thereto.

Note previously confined only to d) loss or damage due to insurable issues.

DELAY

RIAI cl 4.4

- Contractor ... upon the happening of any such event causing delay... shall immediately, and in any event, no later than 20 working days after the happening of any such event, give notice thereof in writing to the Architect, but the Contractor shall nevertheless use constantly the Contractor's best endeavours to prevent delay and to proceed with the Works.
- ***Purpose – to protect the Employer's rights to liquidated and ascertained damages***
- ***Delay events – time responsibility***
- ***Employer's causation***
- ***Neutral causation – Employer's time risk-RIAI***
- ***NOTE –UNLIKE PCW CONTRACTS NEUTRAL EVENTS /NON COMPENSATION CAN BE SUBJECT TO A TIME BAR***

DELAY CONCURRENCY

RIAI cl 4.4.3

- Concurrently delayed by two or more causes one of which is not a variation or delay costs from the Employer 4.3.2
- The contractor shall be entitled to an extension of time for the period of concurrency but have no entitlement to any Delay Costs in 4.3.2 incurred during the concurrent period

Employer's Causation

RIAI cl 4.4

b) possession of the site cl 4.2

f) by reason of any Architect's instruction given in pursuance of cl 2.1

g) because the Contractor has not received in due time necessary instructions from the Architect for which he has specifically applied for in writing

i) delay on the part of independent contractors 3.5

Employer's Causation

RIAI cl 4.4

j) by reason of any act or default of the Employer causing delay in the progress of the Works as provided for in cl 4.3.2

k) by reason of item of archaeological ..cl 2.1.5 and it was unforeseeable

- **11.2 1** – failure to pay after 7 days notice to the Employer the Contractor may suspend the Works for a period of 10 working days –after that he may determine – If paid before then – the time for completion shall be extended by two working days for each working day of suspension.

Neutral Causation

- **Cl 4.4 a)** Force Majeure – defined in cl 1
 - c) by reason of any exceptionally inclement weather
 - d) by reason of loss or damage to the Works Ancillary Items covered by clauses 5.1., 5.2., 10.6., 5.4., 10.7., 5.5, 5.7 and/or 5.8
 - e) civil commotion, local combination of workmen, strike or lockout affecting any of the trades employed upon the Works

Neutral Causation

- **CI 4.4)**
 - h) because the Contractor or any Nominated Sub-contractor or Nominated Supplier has been unable for reasons beyond his control to secure labour and materials as may be essential to the proper execution of the Works
- As a condition precedent to the Contractor's entitlement to claim an extension of time under this sub-clause 4.4, the Contractor shall fully comply with the requirements of sub-clause 6.11 and in the event the Contractor does not comply with sub-clause 6.11.1 to 6.11.4, sub-clause 6.11.5 shall apply.

Practical completion RIAI

- **CI 4.5.1** Contractor to give 20 working days notice when the Contractor expects to complete
- **CI 4.5.2** When the Architect of the opinion the Works are Practically Complete he shall forthwith issue a cert to that effect – PC shall be deemed to take place on day named in such certificate

Effect of Completion

- At PC – release first moiety retention
- Insurance – Care with the Employer
- Employer takes full risk except notified patent defects
- Contractor to remedy notified patent defects
- **CI 4.5.3** Retention period and defects to be remedied at Contractor's expense etc Architect may issue instructions from time to time and be remedied within a reasonable time. Final list to be issued not later than 20 working days after the expiry of the Retention Period
- RIAI cl 4.54. Retention Period (was Defects Liability Period)
- Shall commence on day after PC – usually 12 months
- If Contractor Fails to remedy Employer right to deduct cost from Retention Fund to remedy defect without prejudice to other rights

Partial Completion & Other Issues

- **4.6** Partial completion - 3 working days prior to taking possession
Architect issues Draft Partial Completion Certificate, contractor can raise objection within 2 working days –reasonable evidence it would have adverse affect on contractor sequencing of works and ability to complete
- If no objection PCC issued and Employer takes insurance risk in regard 5.5.1 / 10.7, LADs reduced proportionately and when Architect considers Practical Completion for Relevant part reached shall issue PC and retention for relevant part commences
- % retention for value of Relevant part issued 10 working days after PC.

TERMS AND CONDITIONS-RIAI

5. Liabilities Insurance

Damage due to use and occupation by Employer

- **4.7** issue such damage may be an excluded risk
- **4.8** Building Control
- **5** Indemnities and insurance:
 - 5.1 Persons and property
 - 5.2 Insurance for persons and property
 - 5.3 Other insurance
 - 5.4 All risk insurance
 - 5.5 Insurance policies
 - 5.6 Damage due to excluded risks
 - 5.7 Damage due to design
 - 5.8 War damage
 - 5.9 Limits on Contractor's liability

TERMS AND CONDITIONS-RIAI

6. Contract sum payment

Clause 6 Contract sum payment,

- 6.1 fixed price option
 - 6.6 Variations arising from legislative
 - 6.7 Local and other authority fees
 - 6.8 Provisional sums
 - 6.9 PC sums
 - 6.10 Removal of materials from site

Clause 6.11 Contractors claims

- 6.11
- Extension of time or addition to the Contract sum or any other entitlement under, or in connection with, the contract within 20 working days of became or should have become aware of event, giving entitlement to give notice.
- Within 25 working days, refer to relevant clause, relevant facts, detailed calculation and any adjustment to contract sum.
- If delayed, identify cause and effect on progress and proposals to avoid or reduce delay.

Clause 6.11 Contractors claims

- **6.11.2** Give further info on request
- **6.11.3** If ongoing advise time/cost every fortnight
- **6.11.4** Keep detailed contemporary records
- **6.11.5** Fail to comply with 6.11.1 to 3 shall not be entitled to increase in contract sum or extension of time and Employer released from all liability in connection with the matter

Nominated Sub contract RIAI

PRIME COST AND PROVISIONAL SUMS

- **CL 6.9.1** Sums or rates included in Contract documents - Prime Cost or PC sums - provisions to meet payments by the Contractor to Nominated Subcontractors and Nominated Suppliers – net of any commission or trade or other discount
- Payments made only in accordance with the directions of the Architect as to the works to executed or goods to be supplied by the Nominee. Amount so authorised more or less than PC sum the difference to be added or deducted from the Contract sum as the case may be.

PROVISIONAL SUM

- **CI 6.8.1** Sums, items or quantities marked “provisional” in contract documents shall be at the entire disposal of the Architect and shall be expended in whole or in part as he/she may direct. If the instructions involve the employment of Selected or Nominated entities then they shall be treated as prime cost sums under cl 6.9. If it involves work by the Contractor it shall be valued in accordance with clause 6.4 – variations.

ARCHITECT'S INSTRUCTION / VARIATIONS

- Employer is not entitled to issued direct instructions or order changes except through his agent- Contractor may refuse any direct instruction
- Delegation by Architect /ER – implied under RIAI provided notice given – to other parties identified as having specific design responsibility –structural engineer, services engineer-

Architect's Authority to Change

- No authority to alter contract
- Only Employer and Contractor can agree to vary terms *Kinlen v Ennis UDC (1916) 2 IR 299*
- **RIAI C/ 13 (NEW CLAUSE REF 6.4.1)**
- requires all variations to be in writing (whether oral received from architect and confirmed by contractor in writing with 5 working days unless refuted by architect in writing in 5 working days or issued in writing by architect

Architect's Authority to Change

- Extras not ordered in writing *Donovan v South Dublin Guardians 1905 5NIJR 106* had to be paid because they were certified-
- Payment could be withheld where contract expressly required countersignature of Council chairman *Quinn v Stranorlar UDC 1907 41 LTR 290*
- Variation must be of kind contemplated by contract

RIAI CONTRACT – CL 6.4 ASCERTAINMENT OF PRICES FOR VARIATIONS

- 6.4.1 Any oral instructions, directions or explanations given by the Architect upon the Works to the Contractor....shall, if involving a Variation, be confirmed in writing by the Contractor to the Architect within 5 working days and if his dissent therefrom is not communicated by the Architect to the Contractor in writing within a further 5 working days shall be deemed to be authorised in writing

RIAI CONTRACT – CL 6.4 ASCERTAINMENT OF PRICES FOR VARIATIONS

- 6.4.2 All Variations ordered or authorised in writing or subsequently sanctioned in writingshall be measured and valued with out undue delay by the Architect or the Quantity Surveyor who shall give to the Contractor or his representative opportunity to be present with him on the Works at the time and to take such notes and measurements as the Contractor may require. The Contractor shall be supplied with a copy of the measured Bill of Variations and the valuation thereof unless previously or otherwise agreed shall be made in accordance with the following rules:

Valuing contract sum adjustments

- PWC 10.6.1 similar to works for which there are rates in pricing document.... executed under similar conditions
- RIAI 6.4.2.a(a) rates in Bills of Quantities ..when such work is of a character similar to that to which the aforesaid rates apply ...is carried out under similar conditions
- PWC 10.6.2 not executed under similar conditions or not similar work , rates in pricing document shall be the basis for determination when that is reasonable
- RIAI 6.4.2(b) not of a similar character or executed under similar conditions ..shall be the basis of prices for the same so far as may be reasonable

Valuing contract sum adjustments

- 10.6.3 If the adjustment cannot be determined under the above rules , the Employer's Representative shall make a fair valuation **based on rates for similar work in the locality, if available**
- 6.4.2 b) ..failing which a fair valuation thereof shall be made based on rates for similar work in the locality current at the time the variations are executed
- RIAI 6.4.2 c) Daywork rates vouched –at rates for dayworks in the bill of quantities -if not rates in SCSi/CIF Schedule of Daywork Charges or for relevant trade if a schedule exists and SCSi and notified to RIAI
- 6.5.2 omissions – 10% credit on measured works excluding PC and provisional sums, provisional work and contingency sums and other adjustments under cl 10.1

Interim PAYMENT 6.2

1. Within 1 month of date takes possession and at interval (4 weeks /month) stated in the Contract Particulars up to PC
2. Contractor – submits detailed application for payment
3. Architect within 5 working days of payment claim notice (or other time stated in Contract Particulars) gives certificate of the amount due from Employer
4. Shall specify and show separately amount in respect of each nominated Sub Contractor/Supplier
5. Shall be honoured within 7 working days of presentation to Employer by Contractor -payment due date

Interim PAYMENT 6.2

6. If amount differs ,Architect on request shall explain the difference cl 6.2.2.
7. Employer fails to pay -7working days after latest date- Contractor can charge interest at European Community late payment regs -6.2.9
8. after 5 working days Contractor may suspend works for 10 working days and then determine the contract 6.2.9

Interim PAYMENT 6.2

- What is due
- 6.2.4 total value of work duly executed and materials /goods delivered to site up to date of payment claim notice less retention and amounts previously certified
- Materials/goods on site and off site at discretion of the Architect –where payment received material and good become property of Employer 6.2.6 but Contractor remains responsible
- May at discretion issue interim certificate after PC 6.2.7
- Not conclusive evidence of compliance 6.2.8

PAYMENT

- **RIAI 6.3 Interim payments – what is due -LESS**
- 1 Retention –up to limit of retention fund
- other than Final certificate –*no certificate shall of itself be conclusive evidence that any works, materials or goods to which it relates are in accordance with the Contract*

Employer's right to deduct from sums due

- 2 All costs recoverable as a result of work carried out by others by reason of a refusal to comply with a written notice to comply with an Architect's instruction
- 3 Fees for unnecessary re-measurement

PAYMENT

Employer's right to deduct from sums due

- 4 Employer's expense involved in opening up works where same is found not in accordance with contract
- 5 accounts included in previous certificates to Nominated subcontractors have not been duly discharged – May if such account is paid direct by Employer to Nom Sub
- 6. liquidated damages upon architect certifying date upon which in his opinion practical completion ought to have been achieved

FINAL AND OTHER PAYMENTS

- RIAI 6.12 – pay one half of relevant percentage of sum retained on taking partial or phased possession
- Relevant percentage is the value of the relevant part bears to the then total value of the Works
- Practical completion –issue certificate-shall at same time issue a certificate for payment of one moiety of the total amount so retained

FINAL statement/final cert

- **Final certificate-**
- 3 months after P.C. Shall furnish Architect all documents necessary for the purposes of computations required including Nominated accounts-can be extended at Architect's discretion –and extension applies to period of measurement
- No other contractors documents shall be taken into consideration save in circumstances which the Architect adjudges to be exceptional or additional documents sought by the Architect from the Contractor –
- On compliance with the foregoing –measurement and valuation of Works shall proceed –shall be completed in period of Final Measurement (6 months) . Contractor shall be supplied with a copy of the priced bill of variations not later than end of this period and before issue of Final Certificate

FINAL AND OTHER PAYMENTS

- RIAI 6.12.2) **FINAL draft statement of account** 10 working days from end of Retention period , from completion of making good defects or completion of outstanding works or from period of final measurement –whichever is the latest –
- Architect issues a draft statement of account
- 6.12.3 If no notice of arbitration/ serves court proceedings received within 10 working days he shall issue the Statement of Account
- 6.13 Within 5 working days of the issue of the final statement the Architect shall issue the Final Certificate

FINAL AND OTHER PAYMENTS

- Final Statement Shall state
 - The Contract sum adjusted as necessary
 - The sum of the amounts certified for payment under interim certificates including the moiety of retention certified
 - The difference of the two sums expressed as a balance due
 - Said balance subject to authorised deductions shall at the 10th working day after issue become a debt payable

FINAL CERTIFICATE 6.13.2

- Necessary effect has been given to all terms of this contract which require an adjustment to the Contract Sum-except it is erroneous by reason
- Conclusive in any proceedings arising out of or in connection with the Contract...that the works have been properly carried out and completed in accordance with the terms of the contract ..except figures are erroneous because
 - Fraud, dishonesty or fraudulent concealment relating to the Works or any matter dealing with the Final Certificate
 - Any defect in the Works which reasonable inspection or examination at any reasonable time during the carrying out of the Works or before Final cert would have disclosed
 - No final cert shall be conclusive evidence as to any matter arising under the Contract

Other clauses

- 7 Collateral agreements performance bonds
 - collateral agreements
 - performance bonds
- 8 Safety health and welfare
 - Safety health and welfare at work
 - PSCS
- 9 General
 - Governing law
 - Confidentially
 - Assignment subletting
 - Key personnel

Other clauses

- 10 Optional
 - Wage and price variations
 - Advance payment
 - Retention bond
 - Guarantee account
 - Bank guarantee
 - Insurance to persons property taken out by Employer
 - All risks taken out by Employer
 - Non neg insurance
 - Latent defects insurance
- 11 Determination
 - By Contractor
 - By Employer
- 12 Dispute avoidance
 - Avoidance of disputes
 - Conciliation
 - Arbitration
 - Adjudication

TERMS AND CONDITIONS-RIAI

11. Determination

TERMS AND CONDITIONS-RIAI

11.1 Determination by Employer

11.1.1 Contractor –without reasonable cause wholly suspend the works /shall fail to proceed with Works regularly and with reasonable diligence/ shall refuse or persistently neglect to comply with written notice from Architect requiring the Contractor to remove defective work or improper materials/ in opinion of Architect fail to execute Works in accordance with the Contract/ in opinion of Architect be in serious breach of Contractor's obligations

Default continues for 10 working days after notice – Employer may without prejudice –within 10 working days determine employment of Contractor by notice - shall not be given unreasonably – shall be void if the Employer is at the time of the notice in serious breach of contract

TERMS AND CONDITIONS-RIAI

11.1 Determination by Employer

11.1.1 From time of notice Contractor not to remove and Employer has lien upon temporary works, materials, goods, temporary buildings, plant, tools and equipment -Employer must within one month have entered upon and taken possession of the Works and Site

11.1.2 other reasons for immediate determination -Company

a) the commencement by the Contractor of negotiations to reschedule the whole or part of the Contractor's indebtedness which the Contractor would or might otherwise be unable to pay when due or the Contractor is unable to pay the Contractor's debts as they fall due or stops or threatens to stop payment or the Contractor is deemed to be unable to pay the Contractor's debts for the purpose of any law of any jurisdiction to which the Contractor is subject.

TERMS AND CONDITIONS-RIAI

11.1 Determination by Employer

11.1.2 other reasons for immediate determination

b) actionwithin or outside the jurisdiction,...to wind up the Contractor, enter a scheme of arrangement , small company administrative rescue process or to appoint an examiner, process advisor, administrator , trustee or similar official to the Contractor or

The Employer has reason to believe the foregoing will happen

c) Any third party takes possession or exercises or attempts to exercise any power of sale or a receiver or similar official appointed over the whole or part the undertaking, property, assets or revenues of the Contractor

d) Contractor ceases or threatens to cease to carry on the Contractor's business...

TERMS AND CONDITIONS-RIAI

11.1 Determination by Employer

11.1.3 Contractor being a persons –various forms of insolvency

11.1.4

- a) May engage others to carry out and complete the works and may enter site and use what is on the site
- b) Contractor if required and without payment to assign benefit of any contract for supply and /or works intended for use under the Contract or the execution of the works –Employer shall pay the agreed price, if unpaid.
- c) Contractor to remove from site items the Architect may specific in notice to the Contractor –in default Employer entitled to remove and sell without responsibility for loss/damage and hold proceeds less costs incurred for the credit of the contractor

TERMS AND CONDITIONS-RIAI

11.1 Determination by Employer

11.1.4

d) Until after completion of the works under 11.1 no payment to contractor provided that upon completion and verification within reasonable time of accounts Architect to certify Employer's expenses properly incurred - then calculates by way of adding to the monies paid to the Contractor before determination whether a net sum is due the contractor from the Employer or from Employer to the Contractor

11.1.5 In reasonable opinion of Architect ... Employer to provide site security and cost to be paid by the Contractor

11.1.6 right to determine in event of loss or damage to or destruction of the works or ancillary work as result of any risk required to be insured Employer shall have right to determine on giving 10 working days notice

TERMS AND CONDITIONS-RIAI

11.2 Determination by Contractor

11.2.1 Fails to pay -contractor to give 7 working days notice of intent to suspend - if paid the unpaid certified amount or matter referred to adjudication works will resume

Where suspension for 10 working days – Contractor has right to determine contract

For any one day of suspension Contractor entitled to 2 days extension of time

11.2.2 and 11.2.3 Employer insolvency as company /person –similar to 11.1.2 and 11.1.3

TERMS AND CONDITIONS-RIAI

11.2 Determination by Contractor

11.4 upon determination

- a) With all reasonable dispatch remove all Contractor's things and facilitate subcontractors to do same
- b) Be paid value of work completed . ##
- c) Value of work commenced and executed at date of determination
- d) Cost of goods /materials properly ordered and delivered to site actually paid for by the Contractor or which Contract legally bound to accept delivery –on such payment goods/materials will become the property of the Employer.
- e) Reasonable cost of removal
- f) Reasonable loss /damage caused to the Contractor owing to the determination
- g) Employer will have lien on materials on site paid for and the property of the Employer

TERMS AND CONDITIONS-RIAI

12. Dispute Avoidance

Dispute avoidance cl12

- 12.1 Endeavour to resolve by negotiation
- 12.2 Conciliation – a) dispute or difference -refer giving notice setting
 - A) brief outline of Partie's issues/concerns
 - B) details of reliefs and remedies sought
 - C) Names of person(s) they wish to propose to conciliate
- b) do not agree conciliator in 10 working days either may refer to RIAI requesting nomination

Dispute avoidance cl12

- 12.2 Conciliation – c) conducted to RIAI conciliation guidelines and procedures
- d) not settled within 30 working days of conciliator's appointment either may request a written recommendation from the conciliator
- e) either may reject recommendation by giving written notice to the other party within 10 working days beginning on the working day after the recommendation was issued -if notice of rejection issued in compliance – either may refer dispute to arbitration /court as chosen 12.3
- Otherwise bound by the recommendation as an agreement

Dispute avoidance cl12

- 12.3 Arbitration – if chosen – a) dispute or difference b)-refer giving notice setting
- A) brief outline of Partie's issues/concerns
- B) details of reliefs and remedies sought
- C) Names of person(s) they wish to propose to conciliate
- c) do not agree conciliator in 10 working days either may refer to RIAI requesting nomination
- Arbitration within the meaning of 2010 Arbitration Act

Dispute avoidance cl12.4

- 12.4 Adjudication
- 12.4.1 dispute subject of adjudicator's decision shall not be referred to conciliation
- 12.4.2 Any dispute referred to Conciliation if matter referred to adjudication , the conciliation be adjourned
- 12.4.3 If no adjudication decision parties may resume conciliation but if a decision made the conciliation dispute will be terminated



Thank you
Questions??